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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

STATE OF ARIZONA,
Petitioner,

vs.

FLOYD ORVILLE PETERSON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should the "good faith exception" to the exclusionary rule, found in *United States v. Leon*, 468 U.S. 897 (1984), be expanded to include evidence obtained by a law enforcement officer's objectively reasonable reliance on errors by other law enforcement officers or agencies, as well as errors by neutral magistrates.

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REASONS WHY THE PETITION SHOULD BE DENIED

THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE IS AVAILABLE ONLY WHEN THE ERRANT PARTY IS A NEUTRAL MAGISTRATE WHOSE PROBABLE CAUSE DETERMINATION IS LATER INVALIDATED AND WHEN APPLICATION OF THE RULE WOULD SERVE NO DETERRANT EFFECT; THE RULE SHOULD NOT BE EXPANDED TO MISTAKES BY LAW ENFORCEMENT OFFICERS, WHOSE ERRANT BEHAVIOR THE RULE DOES DETER.

A. Expanding the good faith exception to include police errors would destroy the exclusionary rule altogether.

In 1982, a warrant for Floyd Orville Peterson's arrest was issued by a Flagstaff, Arizona Justice of the Peace, at the behest of the Flagstaff Police Department, for failure to return rental property. This warrant was quashed in 1982, when the rental property was returned, and was removed from the Flagstaff Police Department's active files and computers.

Mysteriously, in February, 1987, the warrant was re-activated and put into the Flagstaff Police Department's computer files as being an outstanding warrant. There was no explanation or justification for such action.

In September, 1987, Mr. Peterson was a suspect in a burglary, which fell under the jurisdiction of the Coconino County Sheriff's Department. A sheriff's deputy ran Mr. Peterson through the NCIC computer, and determined that there was an outstanding warrant for his arrest, originating from the Flagstaff Police Department. The deputy then contacted the Police Department to ascertain whether the warrant was still outstanding, and was told that it was. The deputy never contacted the Justice Court to determine its validity. There is no dispute, however, that the arrest warrant was invalid at that time.

Five sheriff's deputies went to Mr. Peterson's home to arrest him on the five-year old failure to return rental property charge. It is obvious that their true purpose was to get a look inside Mr. Peterson's home to determine if any items similar to the stolen items were there. Based upon their observations, a night-time search warrant was issued, and certain items were seized.

One of the best known principles of criminal law is the judicially fashioned exclusionary rule. There is no doubt that the arrest warrant was invalid, and the fruits of the arrest must be suppressed under the exclusionary rule, unless the good faith exception, announced by this Court in *United States v. Leon*, 468 U.S. 897 (1984), is applicable.

This Court, in *Leon*, held that there would be a "good faith" exception to the exclusionary rule under the limited situation where a warrant is later held to be invalid because a neutral magistrate mistakenly found probable cause. In this limited situation, the law enforcement officer will not be penalized for reasonably relying on the initial probable cause determination of a magistrate, even if further review demonstrates that there was, in fact, no probable cause upon which to issue a warrant.

In fashioning this exception, this Court delved into the stated purpose behind the exclusionary rule, which is to deter unlawful police conduct. Law enforcement officers will be penalized for improper conduct by suppressing the fruits of illegal searches and arrests. This Court, quoting from *United States v. Peltier*, 422 U.S. 531, 542 (1975), reiterated:

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge or may be properly charged with knowledge that the search was unconstitutional under the Fourth Amendment.

Id. at p. 919.

The reason that the exclusionary rule will not be applied to errors of magistrates in determining probable cause is because to do so would serve no deterrant effect on law enforcement officers. In the *Leon* case, there was no error on the part of the police officer — the error was strictly on the magistrate's probable cause determination. This shifts the responsibility to the neutral magistrate, and this Court stated that "penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrance of Fourth Amendment violations," *Id.* at p. 921, so long as the officer's reliance on the magistrate's probable cause determination is objectively reasonable. *Id.* at p. 922.

This Court concluded that imposing the exclusionary rule against magistrates would not serve as a deterrant to them, as it would have no meaning to them in helping to curb improper behavior. This Court did, however, recognize the continuing deterrant effect on the behavior of individual law enforcement officers or the policies of their departments. *Id.* at p. 917.

What the Petitioner is requesting this Court to do is to find the good faith exception applicable to errors by law enforcement officers. This would, in effect, eliminate the exclusionary rule. There would be nothing to deter law

enforcement officers from engaging in misconduct or other illegal acts in violation of Fourth Amendment safeguards. There has been no showing by the Petitioner as to why the exclusionary rule should be eliminated.

B. Expanding the good faith exception would overrule existing law found in *Whiteley v. Warden*.

Petitioner argues that the sheriff's deputy acted in good faith in determining that there was an outstanding warrant against Mr. Peterson. The deputy contacted the originating agency, and confirmed that a warrant was listed in the computer and, apparently, in hard copy in the originating agency's files. Petitioner argues that the sheriff's deputy should not be held responsible for erroneous re-entry of the warrant by the Flagstaff Police Department.

This flies squarely in the face of the legal premise found in *Whiteley v. Warden*, 401 U.S. 560 (1971). In *Whiteley*, this Court limited an officer's right to rely upon the actions of other officers. More commonly, officers in different agencies are held to the "collective knowledge" of the originating agency.

To demonstrate, had the originating agency and the arresting agency been one and the same, the exclusionary rule would have applied, and no good faith exception would have been found, since the error was not on the part of a neutral agency. Just because the originating agency and the arresting agency are different, the behavior of the originating agency is not going to be excused merely because the arresting agency acted in good faith in determining whether the outstanding warrant was valid.

This is not to suggest that the sheriff's deputy was totally without fault in this situation. The sheriff's deputy could have checked with the justice court to determine whether the warrant was truly outstanding. However, even if the sheriff's deputy behaved in an objectively reasonable manner, the originating agency, the Flagstaff Police Department, did not. There is no excuse, and none was offered, as

to why the police department re-entered a warrant which had been quashed some five years earlier. Nor was there any explanation offered as to why this egregeous error remained in the computer for seven months without anyone discovering it. This type of slip-shod record keeping is exactly the type of behavior for which the exclusionary rule serves as a deterrant.

This Court, in *Whiteley*, encourages the ability of one agency to rely upon the valid actions of another. However, the reverse must also apply. "An otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest." *Id.* at 568.

It is evident that this Court intended the concept of collective knowledge to apply to the exclusionary rule and the limited good faith exception. In a footnote to the *Leon* opinion, this Court noted:

> "References to 'officer' throughout this opinion should not be read too narrowly. It is necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination." 468 U.S. at 923.

C. There is no widespread disagreement, but rather only a minimum number of cases to support the expansion of the good faith exception to the exclusionary rule.

Petitioner argues that there is widespread disagreement in various jurisdictions as to whether the good faith exception should be applied when the arresting agency acted with objective reasonableness, even though the originating agency was in error. For this proposition, Petitioner cites three cases. A review of these cases, however, reveals that only one lone jurisdiction has actually expanded the good faith exception to errors of an originating agency when the arresting officer acted in an objectively reasonable manner.

In *United States v. Towne*, 870 F.2d 880 (2nd Cir. 1989) the Second Circuit Court of Appeals was faced with an issue similar to the issue presented here. As part of a plea agreement, New Hampshire was supposed to drop charges against defendant Towne. The fugitive arrest warrant was never dropped, and, three years later, Vermont officers used that warrant to stop the defendant. During the stop, various firearms were observed, forming the basis of an illegal possession of firearms charge.

The Vermont officer discovered the New Hampshire warrant through the NCIC computer. He confirmed it with a telephone call to the originating agency and received a certified copy before effecting the stop. The Second Circuit Court of Appeals held that the evidence would not be suppressed, and that the good faith exception would apply, because the Vermont officer's behavior was objectively reasonable. That court focused solely on the issue of whether the arresting officer's behavior was reasonable; no mention was made as to whether the originating agency's behavior was reasonable.

Also absent in the Second Circuit's analysis is any mention of the *Whiteley* case. It would appear, however, to overrule the *Whiteley* case, and the "collective knowledge" attributed to all agencies. Respondent would submit that an analysis which focuses strictly on the behavior of the arresting officer is just simply in error, according to *Leon* and *Whiteley*. While this case would appear to give credence to Petitioner's argument, it is not the widespread disagreement advanced by the Petitioner.

Petitioner also cites, in support of its theory for expanding the good faith exception, the case of *Durio v. State*, 807 S.W.2d 876 (Tex. Ct. App. 1991). In that case, a Texas municipal judge issued two arrest warrants, for defendant's failure to pay fines. It was discovered later, after the defendant had been arrested on the warrants, that he had already served a sentence on the underlying charge. The judge then recalled the warrants. The Texas court denied defendant's motion to suppress based upon an illegal arrest, and, in

doing so, focused on the objectively reasonable behavior of the arresting officer in relying upon the validity of the Texas magistrate's warrants. If there was any error on the part of the originating law enforcement agency, it was not discussed, in violation of the principles enumerated in *Whiteley*.

Arguably, this is nothing more than a *Leon* good faith exception case, since it was the impartial magistrate who was in error in not recalling the warrants earlier. The Texas court, however, focused on the objectively reasonable behavior of the arresting officer, in relying upon the validity of the Texas magistrate's warrants. The judge testified that the warrants were valid when executed upon, and later invalidated. In the instant case, the warrant was invalid and nonexistent when it was executed upon.

Lastly, Petitioner cites *United States v. DeLeon-Reyna*, 930 F.2d 396 (5th Cir. 1991), in support of its proposed expansion of the good faith exception. In *DeLeon-Reyna*, the officer and dispatcher miscommunicated over the license number of a vehicle under surveillance. The dispatcher gave a description which did not match the vehicle. The vehicle, a welding truck with no welding equipment on it, was being watched on a lonely stretch of Texas road known for drug trafficking and alien smuggling. In addition, there was a stack of plywood observed, which is frequently used to conceal a hidden compartment used by smugglers.

This case is clearly distinguishable on the facts. The Fifth Circuit held that the warrantless search was not based upon an illegal stop, since any one of the above factors would have given the arresting officer enough probable cause to stop the welding truck. Even though the dispatcher was in error in giving the arresting officer an inaccurate description of the vehicle, such error did not render the stop otherwise illegal. This is simply not a case of an illegal arrest, and the exclusionary rule simply does not apply.

The Texas officer was using a mistake of fact to determine whether to effect a warrantless stop. The totality of circumstances dictated that his behavior was objectively reasonable. This cannot be extended to mistakes of law, such as the nonexistence of a valid arrest warrant in the instant case.

A review of Petitioner's cases reveals only one case which has applied the good faith exception to the exclusionary rule, that being *United States v. Towne*, supra. Respondent submits that this single example is insufficient to warrant invoking the jurisdiction of this Court to modify and expand the good faith exception until there is nothing left of the exclusionary rule.

CONCLUSION

Based on the foregoing reasons, the respondent, Floyd Orville Peterson, respectfully requests that the petition for certiorari be denied.

DATED this 15th day of October, 1992.

Respectfully submitted,

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Attorney for Respondent